

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

TAMPA ELECTRIC COMPANY

Employer

and

Case No. 26-RC-8217
(formerly 12-RC-8541)^{1/}

INTERNATIONAL BROTHERHOOD OF

ELECTRICAL WORKERS, LOCAL 108, AFL-CIO^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: ^{3/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are thereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{4/}

3. The Petitioner involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a voting group which may appropriately be added to the existing bargaining unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ^{5/}

Included: All distribution system operators (DSOs) employed by the Employer at its Tampa, Florida facilities.

Excluded: All other employees, office clerical employees, clerks, guards and supervisors as defined in the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated the desire to be included in the existing collective bargaining unit currently represented by the Petitioner and the Petitioner may bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are

employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Brotherhood of Electrical Workers, Local 108, AFL-CIO.

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Tampa Regional Office (Region 12), 201 East Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824, on or before **October 24, 2000**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **October 31, 2000.**

DATED October 17, 2000, at Memphis, Tennessee.

/s/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

1/ On September 28, 2000, the General Counsel issued an Order Transferring Case from Region 12 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 12 and will continue as Case 12-RC-8541, except that Region 26 will retain jurisdiction only with respect to pre-election issues relating to the substance of this Decision.

2 / The Petitioner's name is corrected to reflect the proper name.

3/ The Employer and the Petitioner filed timely briefs which have been duly considered.

4/ The parties stipulated Tampa Electric Company, hereinafter referred to as the Employer, is a Florida public utility with offices and places of business located in Tampa, Florida, where it is engaged in the generation, transmission and sale of

electricity. During the past 12 months, a representative period, the Employer received gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from firms located outside the State of Florida.

5/ The Petitioner seeks to represent a residual unit of 13 distribution system operators (DSOs). The Petitioner represents a unit of the Employer's employees, which includes troublemen, servicemen, linemen, metermen, electricians, mechanics, as well as other classifications. The Petitioner has represented the Employer's employees since 1944. The current collective bargaining agreement (CBA) is effective from March 23, 1998 through March 31, 2001.

The Employer asserts the 13 DSOs are supervisors within the meaning of Section 2(11) of the Act. The Petitioner argues the DSOs are not statutory supervisors. The parties stipulated that the issue of supervisory status concerns whether the DSOs' authority to assign and direct work is sufficient to meet Section 2(11) supervisory status. The parties further stipulated the DSOs do not possess or exercise the authority to hire, discharge, transfer, suspend, layoff, recall, promote, reward, discipline, reprimand or adjust employee grievances or effectively recommend such.

From 1944 until 1992, the DSOs or their predecessors, trouble dispatchers (TDs), were in the collective bargaining unit. In 1992, the Employer filed a petition in Case 12-UC-97 seeking the removal of the TDs on the basis of their supervisory status. On March 16, 1992, the Regional Director of Region 12 issued a Decision and Clarification of Bargaining Unit finding that the TDs were supervisors within the meaning of Section 2(11) of the Act based upon the analysis set forth in **Big Rivers Electric Corporation**, 266 NLRB 380 (1983). In **Mississippi Power & Light Co.**, 328 NLRB

No. 146 (1999), the Board overruled **Big Rivers** and found that the distribution dispatchers' role, in calling in troublemen or line crews for major problems, dispatching crews to trouble spots, setting priorities and requiring employees to work overtime, did not require the use of significant, if any, independent judgment. Furthermore, the dispatchers' direction of field employees in the execution of switching orders did not involve the use of independent judgment. Based upon the Board's decision in **Mississippi Power & Light**, the Petitioner filed this petition seeking the return of the DSOs to the bargaining unit.

The Employer employs 13 DSOs who work rotating shifts, 8 a.m. to 4 p.m., 4 p.m. to midnight and midnight to 8 a.m. All are stationed at the Energy Control Center. The DSOs are paid a salary plus are eligible for overtime. Their supervisor is David F. Stephens, the lead supervisor for system service, who works from about 7 a.m. to 5 p.m. but works additional hours during the summer, due to frequent thunderstorms, and is on call at all times. Before the 1992 UC decision, there were three supervisors over the DSOs. Jerry Revels and James Taylor, supervisors in field operations, are the immediate supervisors for the troublemen and servicemen but the troublemen and servicemen receive their assignments from the DSOs. There are 29 troublemen, whose job is to respond to problems on electrical distribution – wires down, poles down, outages, etc. while there are approximately 5 servicemen, whose job is to repair street lights and reconnect meters.

The record evidence established the DSOs perform 3 different functions: utilize remote switching equipment whenever possible to restore service and perform prearranged repair requests requiring switching of loads on the transmission and

distribution lines (switching function), monitor computer systems to identify system and customer problems that require action (trouble function) and monitor the system to identify meter calls requiring disconnection or reconnection of service (meter function). There are two types of switching functions, prearranged and emergency. The DSOs are responsible for designing the switches and must take into account the time of day, load, switch locations, the peak load at a substation transformer and the amount of load on a circuit breaker. If the switching is to be performed at a substation, then the DSO will assign a substation electrician to handle this function.

Most of the record evidence concerned the trouble function performed by the DSOs. Initially, a trouble call comes in from a customer service representative, police department, fire department or water department. The DSO reviews a map to determine if the call is interrelated with a previous call to avoid duplication. According to the Employer's policy, there are priorities for calls; thus, if the call concerns a wire or pole down, or other priority, then a troubleman must be immediately dispatched. The Employer's computer system suggests a particular troubleman to be assigned to go to the site of the problem. The DSO either assigns that particular troubleman or another, if he is closer and available. If the call arrives at the end of the shift, then the DSO determines whether to have the current shift respond to the call or wait until the new shift arrives. After the troubleman gets to the site, the troubleman reports to the DSO concerning his evaluation of the problem and whether additional employees will be needed at the site. If he can resolve the problem, the troubleman and the DSO communicate back and forth until the problem is resolved. The troublemen must obey the DSO's instructions unless there is a safety issue. There was no evidence of any

troubleman disobeying a DSO's instructions but if such occasion occurred, then supervisors Revels or Taylor, not the DSO, would investigate the matter.

In performing the trouble function, the DSOs exercise the authority to request troublemen to remain on the job after their shift ends in order to restore power to customers or in anticipation of further problems, to call in employees to perform switching orders and to call in employees for additional help to restore power to customers. The Employer's policy and the CBA dictate the minimum number of employees who may be called out but it is the judgment of the DSO, following the troubleman's recommendation and company policy, that determines the final decision. Since the troubleman is at the site and can better determine the problem, if he requests additional employees, the DSO almost always honors his request. According to supervisor Stephens, no DSO has ever been "chastised" for calling out too many crews. This is due to the Employer's policy of emphasizing the restoration of customers' service as well as safety concerns. When the DSO calls out troublemen, he also notifies the supervisor of the troublemen.

The troublemen are called based upon a list and can decline the assignment unless it is an emergency situation, such as a hurricane. If an employee rejects the callout, then the DSO calls the next employee on the list. Moreover, an employee can decline to remain on shift past his normal ending time unless it is an emergency situation. When employees work beyond 8 hours on a shift, under the CBA, they are entitled to time and a half pay. Furthermore, if an employee is called out and works more than six hours, he is entitled to a free meal and a one-hour meal period.

The DSOs can hold themselves over beyond the end of the shift, if conditions warrant, and can call in additional DSOs.

As previously stated, in **Mississippi Power & Light**, the Board found the distribution dispatchers were not statutory supervisors. Specifically, the Board found:

When a dispatcher receives a report of a customer's problem, the dispatcher sends an on-duty troubleman to the problem area. Once in the area, the troubleman reports the extent of the problem to the dispatcher and requests whatever additional help the troubleman believes is needed....[T]he decision of whether to call out employees and how many to call out is a collaborative decision between the troubleman and dispatcher and is generally, if not always, based on the troubleman's assessment of the problem and number of employees requested by the troubleman. Indeed, the bargaining agreement effectively requires the distribution dispatchers to seek additional help when requested. Thus, we find that, as set forth above, the distribution dispatchers' role in calling out additional employees does not require the use of supervisory independent judgment.

Although calling off-duty employees to work entails the payment of overtime, because the dispatchers have only a limited role in deciding when to call out employees, the dispatchers' role in selecting employees for overtime is similarly limited. In addition, the determination of whom to call out is governed by well-established procedures.... Only when the dispatcher cannot reach the on-call supervisor or the on-call crew, will the dispatcher need to personally select the crew to be called. In these circumstances, the dispatcher operates pursuant to the established protocol of calling out employees to equalize overtime based on a predetermined list. The established practice is followed whether the call out is made by the day supervisor, the on-call supervisor, or the dispatcher.

In addition, distribution dispatchers who have too much to handle, e.g., after storms causing multiple outages, can hold themselves over for the next shift, call in other distribution dispatchers, or call in distribution dispatchers from the next shift. As the employer has well-established policies and guidelines for

such assignments, the dispatchers do not exercise independent judgment in selecting employees for overtime.

Distribution dispatchers have a limited role in setting priorities for work. If, for example, the problem can be corrected temporarily by coiling a line on top of the pole, the dispatcher may postpone further correction of the problem until a regularly scheduled crew can complete the repair. During multiple outages, distribution dispatchers may give the line crews priorities regarding which customers to restore first.... When the crew reports a repair has been completed, the dispatcher may send them to another outage based upon the critical customers list, to the next customer by the order of when the outage problem was reported to the dispatcher, or on a geographic basis, i.e., the dispatcher will send a crew to the nearest problem rather than across town. We find that the distribution dispatchers' role in assigning parties is governed by pre-existing rules, and what judgments they do make are based upon commonsense considerations not unique to supervisors.

[T]he judgment exercised by the dispatchers in selecting or designing switching sequences is a function of the dispatchers' own work, based upon their training, knowledge, experience and does not constitute the exercise of independent supervisory judgment. ... Similarly, the dispatchers' back-and-forth communication with field employees regarding the implementation of switching sequences does not entail the exercise of statutory independent judgment, but rather the almost routine or clerical relay of complex schemata.

In the case *sub judice*, the DSOs' authority and judgment is almost identical to that of the distribution dispatchers in **Mississippi Power & Light**. Specifically, the DSOs do not exercise statutory independent judgment when performing the following functions: assigning a troubleman to a call, communicating with the troubleman concerning the resolution of a problem, assigning a substation electrician to a switching sequence, requesting additional employees for callout duties and requesting a

troubleman to remain on the job after his shift ends. Rather, the record evidence shows, similarly to **Mississippi Power & Light**, that these assignments and directions are governed by the Employer's policies, the CBA, the troubleman's assessment of the problem and commonsense considerations not unique to supervisors; thus, these assignments and directions do not entail the exercise of statutory independent judgment even though they may cause the payment of overtime to employees. Furthermore, the design and selection of switching sequences do not constitute the exercise of independent supervisory judgment; rather, it is a function of the dispatchers' own work, based upon their training, knowledge and experience.

The Employer asserts that it has not undergone "accelerated technological changes" in the manner that was discussed in **Mississippi Power and Light**; thus, this factor should not be a consideration in reversing the 1992 UC decision. This assertion misreads the import of the **Mississippi Power and Light** decision. In **Mississippi Power and Light**, the Board found that accelerated technological changes was a reason to reconsider its decision in **Big Rivers** but was not a specific factor to be considered in each case thereafter. The Employer also asserts there are factual distinctions in the operations of Mississippi Power and Light and itself, such as the DSOs at the Employer design the switches while the engineers design the switches at Mississippi Power and Light. However, the Board in Mississippi Power & Light, specifically found such factual distinctions to be "legally insignificant." Moreover, the Employer asserts there are no factual differences between its operation in 1992 and present. Assuming *arguendo* that there are no material changes in the significant facts, the Board law has changed and the record evidence supports the determination that the

DSOs, under the Board's rationale set forth in Mississippi Power & Light, are not statutory supervisors. As for the Employer's assertion that it relied upon the Board's 1992 UC decision to structure the DSOs' jobs and, thus, the decision should not be reversed, this assertion is legally untenable. Any quasi-judicial body, such as the Board, has the authority to reassess the correctness of prior decisions and to change the law regardless of whether a party has relied upon said prior decisions.

In conclusion, I find that DSOs are not supervisors within the meaning of Section 2(11) of the Act.

There are 13 employees in the voting group found appropriate herein.

CLASSIFICATION INDEX

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